

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P209003PC-WT		FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/005542	International filing date (day/month/year) 21.05.2004	Priority date (day/month/year) 28.05.2003	
International Patent Classification (IPC) or national classification and IPC			
Applicant COTY B.V.			

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>2</u> sheets, as follows:</p> <p style="margin-left: 40px;"><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p style="margin-left: 40px;"><input checked="" type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																	
<p>4. This report contains indications relating to the following items:</p> <table border="0"> <tr> <td><input checked="" type="checkbox"/> Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/> Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/> Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/> Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/> Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/> Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/> Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/> Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>		<input checked="" type="checkbox"/> Box No. I	Basis of the report	<input type="checkbox"/> Box No. II	Priority	<input type="checkbox"/> Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/> Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/> Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/> Box No. VI	Certain documents cited	<input type="checkbox"/> Box No. VII	Certain defects in the international application	<input type="checkbox"/> Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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International application No.

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:

- ☐ international search (Rule 12.3 and 23.1(b))
☐ publication of the international application (Rule 12.4)
☐ international preliminary examination (Rule 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

☐ the international application as originally filed/furnished

☒ the description:

pages 1-4 _____ as originally filed/furnished

pages* 5 _____ received by this Authority on 02.09.2005 with letter of 02.09.2005

pages* _____ received by this Authority on _____

☒ the claims:

nos. _____ as originally filed/furnished

nos.* _____ as amended (together with any statement) under Article 19

nos.* 1-4 _____ received by this Authority on 16.03.2005 with letter of 15.03.2005

nos.* _____ received by this Authority on _____

☐ the drawings:

sheets _____ as originally filed/furnished

sheets* _____ received by this Authority on _____

sheets* _____ received by this Authority on _____

☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages _____

☐ the claims, nos. _____

☐ the drawings, sheets/figs _____

☐ the sequence listing (*specify*): _____

☐ any table(s) related to sequence listing (*specify*): _____

4. ☒ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

☒ the description, pages 5 _____

☐ the claims, nos. _____

☐ the drawings, sheets/figs _____

☐ the sequence listing (*specify*): _____

☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	<u>1-4</u>	YES
	Claims		NO
Inventive step (IS)	Claims	<u>1-4</u>	YES
	Claims		NO
Industrial applicability (IA)	Claims	<u>1-4</u>	YES
	Claims		NO
2. Citations and explanations (Rule 70.7)			
1. This report makes reference to the following documents:			
D1: WO-A-01/26617			
D2: WO-A-99/66881			
2. The introduction of the radical protection factor RPF 2630×10^{14} rad/mg on page 5, line 1 of the description is not supported by the originally submitted documents.			
The correction on page 5, line 11, of 10^4 to 10^{14} , is accepted as the correction of an obvious error. It appears clear from the description that only RPF of more than 10^{14} can be intended.			
3. Claim 1 defines the active substance preparations in addition in terms of a radical protection factor to be achieved. This technical feature is achieved by the different combination of the individual extracts. It is therefore accepted that the feature is suitable for characterising the product (active substance preparation).			

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

4. Novelty

The subject matter of the current claims can be considered novel in view of the available prior art.

D1 discloses cosmetic preparations which contain active substance preparations with a high radical protection factor. The active substance preparations contain extracts of tea leaves (*camellia sinensis*), green coffee beans and *pongamia pinnata* (see D1: example 2; page 17, lines 12 and 13 and page 6, lines 2 - 10). Extract of *Angelica achangelica* roots may also be included. The active substance preparations contain phospholipids, which form associations with the active substance complexes (claims 1 and 9).

D2 also discloses cosmetic preparations which contain active substance preparations that have a high radical protection factor and contain extracts of tea leaves (*camellia sinensis*), green coffee beans, *pongamia pinnata* and *Angelica achangelica* roots. The active substance preparations contain phospholipids, which form associations with the active substance complexes (see D2: claims 1 and 12; page 15, line 35 - page 16, line 10; example 6).

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5. Inventive step

The subject matter of independent claim 1 differs from the disclosure of D1 in that no phospholipids are added.

5.1. The applicant indicates that the (subjective) problem of interest is that of developing cosmetic preparations which are easy to produce and manipulate and which have a high radical protection factor (page 1, line 31 ff.).

5.2. The applicant has credibly shown that the phospholipids in the preparations of D1 and D2 are essential to the stability of the radical protection factor of the mixtures.

5.3. The technical problem addressed by the current application can therefore be considered the development of preparations based on extracts of tea leaves (*camellia sinensis*), green coffee beans, *pongamia pinnata* and *Angelica achangelica* roots and which have a stable radical protection factor.

5.4. An inventive step can be acknowledged, since it was not obvious to a person skilled in the art proceeding from D1 to achieve a stable radical protection factor without using liposomes.

Both in D1 and D2 the phospholipids are the essential ingredients for achieving stable radical

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
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protection factors.

An inventive step can therefore be acknowledged in respect of claim 1 and claims 2 - 4, which are dependent thereon.